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STATE OF TENNESSEE  
DEPARTMENT OF HEALTH

IN THE MATTER OF:	)	BEFORE THE TENNESSEE BOARD
	)	OF MEDICAL EXAMINERS
ALLEN R. FOSTER, M.D.	)	
RESPONDENT	)	DOCKET NO. 17.18-108085A
	)	
	)	
KNOXVILLE, TENNESSEE	)	
TENNESSEE LICENSE NO. 31234	)	

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**AGREED ORDER**

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This matter came to be heard before the Tennessee Board of Medical Examiners (hereinafter the "Board") on the 20<sup>th</sup> day of September, 2011, pursuant to a Notice of Charges issued against Allen R. Foster, M.D. (hereinafter "Respondent") by the Division of Health Related Boards of the Tennessee Department of Health, (hereinafter the "State"). The State was represented by Andrea Huddleston, Deputy General Counsel. Respondent was represented by counsel, Frank Scanlon, Esq. After consideration of the Notice of Charges and presentation of counsel, the Board finds as follows:

1. Respondent agrees that presentation to and consideration of this Agreed Order by the Board for ratification and all matters divulged during that process shall not constitute unfair disclosure such that the Board or any of its members shall be prejudiced to the extent that requires their disqualification from hearing this matter should this order not be ratified.
2. Respondent understands the nature of the charges herein alleged and that if proved at hearing, such charges and allegations would constitute cause for imposing discipline upon Respondent's license issued by the Board.

3. Respondent is aware of each of Respondent's rights, including the right to a hearing on the charges and allegations, the right to appear personally and by counsel, the right to confront and cross-examine witnesses who would testify against Respondent, the right to testify and present evidence on Respondent's own behalf, as well as to the issuance of subpoenas to compel the attendance of witnesses and the production of documents, the right to contest the charges and allegations, and other rights which are accorded Respondent pursuant to the Administrative Procedures Act and other applicable laws, including the right to seek reconsideration, review by the Chancery Court and appellate review.
4. In order to avoid the expense and uncertainty of a hearing, Respondent freely and voluntarily waives each and every one of these rights set forth above and admits the truth of the allegations herein contained. Respondent agrees that cause exists to discipline his license.
5. Respondent understands that by signing this Agreed Order, Respondent is enabling the Board to issue its order without further process. In the event that the Board rejects this Agreed Order for any reason, it will be of no force or effect for either party.

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#### **I. FINDINGS OF FACT**

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6. Respondent has been at all times pertinent hereto licensed by the Board as a medical doctor in the State of Tennessee, having been granted Tennessee medical license number 31234 by the Board on March 17, 1999, which has a current expiration date of November 30, 2011.

7. On July 15, 2011, pursuant to Respondent's pleas of guilty, the United States District Court for the Eastern District of Tennessee entered a judgment of guilty against Respondent for (1) Health Care Fraud, in violation of 18 U.S.C. § 1847 and (2) Failure to File Federal Income Tax, in violation of 26 U.S.C. § 7203. Respondent was sentenced to a term of imprisonment of twelve months and one day to be followed by three years of supervised release, and ordered to make restitution in the amount of \$736,905.07 to the Internal Revenue Service, Medicare and TennCare.
8. Based upon the plea agreement between the Government and the Respondent upon which the Respondent's guilty plea is predicated, the Respondent is required to "...surrender his license to practice medicine to the Tennessee Board of Medical Examiners, pursuant to the Board's General Rules and Regulations Governing the Practice of Medicine, chapter 0880-02-.12, paragraph (1), subparagraph (e)."
9. At the time of entry of this Order, Respondent acknowledges that he was the subject of outstanding charges related to prescribing controlled substances, as demonstrated in the Notice of Charges attached as Exhibit A.

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## II. CONCLUSIONS OF LAW

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The facts as found in the Finding of Fact are sufficient to establish that the Respondent has violated the following statutes or rules which are part of the Tennessee Medical Practice Act, (TENN. CODE ANN. § 63-6-101, *et seq.*) for which disciplinary action before and by the Board is authorized:

10. The Findings of Fact in paragraph 7 relative to the felony criminal conviction of the Respondent constitute grounds for disciplinary action against Respondent's license to

practice as a medical doctor in the State of Tennessee pursuant to TENN. CODE ANN. § 63-6-214(b)(1) which authorizes disciplinary action against a Respondent who has engaged in unprofessional, dishonorable or unethical conduct.

11. The Findings of Fact in paragraph 7 relative to the felony criminal conviction of the Respondent constitute grounds for disciplinary action against Respondent's license to practice as a medical doctor in the State of Tennessee pursuant to TENN. CODE ANN. § 63-6-214(b)(10) which authorizes disciplinary action against a Respondent who is guilty of a conviction of a felony, conviction or any offense under state or federal laws relative to drugs or the practice of medicine, conviction of any offense involving moral turpitude or conviction of any offense for which the person is required to register as a sexual offender or violent sexual offender pursuant to title 40, chapter 39, part 2.

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### III. REASONS FOR DECISION

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The Tennessee Board of Medical Examiners takes this action in order to protect the health, safety and welfare of the citizens of the State of Tennessee.

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### IV. ORDER

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**NOW THEREFORE**, Respondent, for the purpose of avoiding further administrative action with respect to this cause, agrees to the following:

12. The Tennessee medical license of Allen R. Foster, M.D., license no. 31234, is hereby **REVOKED**, effective upon entry of this Order.

13. Respondent must pay, pursuant to TENN. CODE ANN. § 63-6-214(k) and Rule 0880-2-.12(1)(j) of the Official Compilation Rules and Regulations of the State of Tennessee, the actual and reasonable costs of prosecuting this case to the extent allowed by law, including all costs assessed against the Board by the Division's Bureau of Investigations in connection with the prosecution of this matter. These costs will be established by an Affidavit of Costs prepared and filed by counsel for the Department. The maximum amount for the assessment of costs shall be fifty thousand dollars (\$50,000.00).
14. Respondent understands that this is a formal disciplinary action and will be reported to the Health Integrity and Protection Data Bank (H.I.P.D.B.) and/or similar agency.

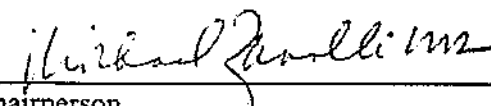
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V. NOTICE


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15. Any and all costs shall be paid in full within one (1) year from the effective date of this Order by submitting a certified check, cashier's check, or money order payable to the State of Tennessee, which shall be mailed or delivered to: **Disciplinary Coordinator, The Division of Health Related Boards, Tennessee Department of Health, 227 French Landing, Suite 300, Heritage Place Metro Center, Nashville, Tennessee 37243.** A notation shall be placed on said check that it is payable for the costs of Allen R. Foster, M.D.


This **AGREED ORDER** was approved by a majority of a quorum of the Tennessee Board of Medical Examiners at a public meeting of the Board and signed this 24<sup>th</sup> day of JANUARY, 2017.

  
\_\_\_\_\_  
Chairperson  
Tennessee Board of Medical Examiners


**APPROVED FOR ENTRY:**

  
Allen R. Foster, M.D.  
Respondent  
Tennessee License Number 31234

11-16-2011  
DATE

  
Frank Scanlon, Esquire  
214 Second Avenue North, Suite 300  
Nashville, Tennessee 37201  
Attorney for Respondent

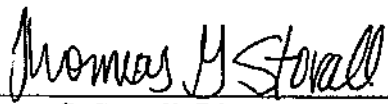
11-9-11  
DATE

  
Andrea Huddleston (B.P.R. #016155)  
Deputy General Counsel  
Office of General Counsel  
Tennessee Department of Health  
Plaza I, Suite 210  
220 Athens Way  
Nashville, Tennessee 37243  
(615) 741-1611

12-5-11  
DATE

**CERTIFICATE OF FILING**

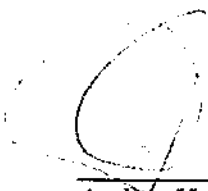
This Order was received for filing in the Office of the Tennessee Secretary of State, Administrative Procedures Division, and became effective on the 27<sup>th</sup> day of January, 2012.

  
\_\_\_\_\_  
Thomas G. Stovall, Director     *abh*  
Administrative Procedures Division

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of this document has been served upon Respondent, Allen R. Foster, M.D., through Respondent's attorney, Frank Scanlon, Esq., 214 Second Avenue North, Suite 300, Nashville, Tennessee 37201, by delivering same in the United States Mail, Certified Number **7011 1150 0002 0998 8723**, return receipt requested, and United States First Class Postage Pre-Paid Mail, with sufficient postage thereon to reach its destination.

This 30<sup>th</sup> day of January, 2012.

  
\_\_\_\_\_  
Andrea Huddleston  
Deputy General Counsel

## EXHIBIT A



BEFORE THE BOARD OF MEDICAL EXAMINERS  
STATE OF TENNESSEE

IN THE MATTER OF:

ALLEN R. FOSTER, M.D.,

License No. 31234  
(Knoxville),

Respondent

NO. 17.18-108085A

## NOTICE OF CHARGES

The Division of Health Related Boards of the Tennessee Department of Health (State) brings this administrative action seeking discipline against the license held by Allen R. Foster, M.D. (Respondent) for prescribing controlled substances in amounts and/or for durations not medically necessary, advisable or justified for a diagnosed condition, contributing to the death of a non-patient as a result of over-prescribing to a patient, failing to supervise family nurse practitioners to ensure compliance with the required standard of care regarding prescribing and other aspects of patient care, and committing gross malpractice in connection with a facet joint injection which led to a patient's paralysis. The State seeks limitation, suspension, or revocation of Respondent's license, the imposition of civil penalties, and the assessment of costs, including costs of investigation and attorney fees.

The State alleges as follows:

## I. JURISDICTION

1. The Tennessee Board of Medical Examiners ("Board") is responsible for the regulation and supervision of the practice of medicine in the State of Tennessee. TENN. CODE ANN.

§§ 63-6-101—63-6-1111.

2. TENN. CODE ANN. § 63-6-214 grants the Board the duty and power to suspend or revoke or otherwise discipline a licensee who has violated the provisions of Title 63, Chapter 6, of the Tennessee Code Annotated.
3. Respondent was served with notice of intent to initiate disciplinary action, pursuant to Tenn. Code Ann. § 4-5-320(c), on or about March 8, 2010.

## II. PARTIES

4. The Division of Health Related Boards of the Tennessee Department of Health ("State") is located in Nashville, Davidson County, Tennessee and is responsible to bring administrative actions for discipline of medical licenses before the Board.
5. Respondent holds license number 31234 issued by the Board, and resides in Knox County, Tennessee.
6. Respondent may be served with process by certified mail, return receipt requested, pursuant to Tenn. Code Ann. § 63-1-108(d), at the following address:

Dr. Allen R. Foster, M.D.  
900 East Woodland Avenue  
Knoxville, TN 37877

## III. ALLEGATIONS OF FACT

7. Respondent received a medical degree from Howard University in 1988 and thereafter completed residencies in pediatrics, anesthesiology, and cardiothoracic anesthesiology.
8. Respondent received a medical license from the Commonwealth of Pennsylvania in 1993 and from the State of Connecticut in 1994.
9. In or about 1993, Respondent began to practice pain management on a part-time basis.

10. Respondent received a Tennessee license from the Board on March 16, 1999. The current expiration date of the license is November 30, 2011. At all times relevant to the allegations of this complaint, Respondent practiced medicine in the State of Tennessee.
11. From on or about 2002, Respondent has practiced pain management on a full time basis.
12. From on or about 2002 until in or about 2007, Respondent maintained a medical practice with offices in Knoxville, in Knox County, Tennessee, and Morristown, in Hamblen County, Tennessee.
13. From sometime in or about 2007, Respondent closed the Morristown office and has since then maintained an office in Knoxville.

**Over-prescribing of controlled substances**

14. From on or about December 2004 through on or about 2007, Respondent prescribed narcotics for a number of patients for treatment of reported chronic pain. During the course of this treatment Respondent on a number of occasions committed the acts or omissions set forth below.
15. Respondent failed to ensure that the medical records of previous providers were obtained and included in the patients' records or ignored such records, or, when included, failed to consider them;
16. Respondent failed to order appropriate diagnostic tests and procedures, such as labs, blood work, physical therapy, counseling, or dietary plans, to determine the cause of patients' symptoms such as chronic lower back pain, sadness, and nervousness or anxiety, and to detect signs of serious health conditions such as hypertension, diabetes, drug addiction, and depression;

17. Respondent failed to enforce the terms of patient pain contracts which provided, among other things, that the patient would fill prescriptions only at one specific pharmacy, would not seek or obtain pain prescriptions from other providers (including hospital emergency rooms), would not divert or sell any prescribed medication, would not ask for early refills, would not take non-prescribed medication without the provider's approval, would comply with urine drug screens, pill counts, and other monitoring measures, would provide a good contact number for implementation of such monitoring measures, and would be subject to dismissal for any violations.
18. Respondent failed to have in place measures to ensure that his office staff would bring to his attention, and that he would respond appropriately to, reports received from outside the office regarding patient drug-seeking or other abusive behavior.
19. Respondent continued to prescribe pain medication to patients despite knowledge that those patients had inconsistent drug screens or other clear indications of drug seeking behavior.
20. Respondent failed to adequately supervise Family Nurse Practitioners Gwendolyn Noe and Eva Fields with regard to their prescribing controlled substances.
21. Respondent's pattern of conduct included but was not limited to the following patients: P.Bl., M.Br., M.Bu., G.B., T.B., J.B., T.Cl., T.Co., B.C., S.C., M.D., M.G., J.G., J.H., A.H., C.H., B.H., B.J., S.J., and CR.

#### Death of Jeffrey Mark Carpenter

22. Respondent's overprescribing to patient CR, a thirty year old female, contributed to the death of a non-patient with whom CR shared her medication. Respondent initially prescribed controlled substances for CR in 2005 for back pain without obtaining CR's

- previous treatment record or previous diagnostic test results, and without initiating any diagnostic procedures to determine the cause of the pain and the options for treatment.
23. In the fall of 2005 and the early part of 2006, Respondent's nurse practitioners continued to prescribe Roxicodone, Soma, and Klonopin to CR despite CR's repeated requests for early refills and her use of the hospital emergency room to obtain pain medication, all of which were prohibited by CR's pain contract.
  24. Beginning on March 27, 2006, Respondent resumed seeing CR personally. Respondent continued the same course of prescribing despite a report from another provider that CR was simultaneously receiving Soma from him and that CR had lied about receiving it from Respondent, both of which actions constituted violations of CR's pain contract.
  25. On January 27, 2007, a law enforcement officer found CR, intoxicated, staggering around inside a motel room. On the floor of the room was the dead body of Jeffrey Mark Carpenter. In the room, the officer found prescription bottles for prescriptions written by Respondent which were filled by CR on January 18, 2007. Both bottles when found contained far fewer doses than should have been remaining if taken according to the prescription.
  26. Respondent continued to prescribe controlled substances to CR, and did not dismiss CR as a patient until June 11, 2007, when she failed to come in for a pill count.

**Failure to adequately supervise Family Nurse Practitioner Gwendolyn Noe in February 2006.**

27. In August 2005, Respondent hired Gwendolyn Noe, a Family Nurse Practitioner (FNP), as an employee to work for him at his practice in Morristown, Foster Care Anesthesia.

Ms. Noe saw established patients, while Respondent saw new patients and performed the in-office procedures.

28. In February 2006 Respondent informed Ms. Noe that he would be out of the office for a few weeks as a result of an out of state trip to have his wife receive treatment in a drug program. He said that a Dr. Williams would be available in case of any problems, and that Respondent could be reached around the clock at certain telephone numbers to discuss patient care with her.
29. Respondent instructed his staff not to change the patient visits scheduled during his absence, with the result that Ms. Noe was responsible to see both the established patients already scheduled to see her, as well as all the patients who were scheduled to see Respondent. Ms. Noe was required to see an excessive number of patients per day.
30. Respondent left on his trip on February 10, 2006. Ms. Noe attempted to reach Respondent at the telephone numbers he had provided. Respondent did call her back to discuss billing questions but never returned her call about patient care. Ms. Noe stopped seeing patients at Respondent's office on February 27, 2006.

**Failure to exercise proper care in giving lumbar facet injection to patient EG.**

31. On or about April 21, 2005, Respondent gave patient EG, a forty-seven year old female, lumbar facet joint blocks at three levels in his Morristown office. Respondent used 6.75% phenol, and did not use a fluoroscope to guide the injections. Instead, Respondent did the procedure "anatomically." Patient EG sustained permanent nerve injury and paralysis as a result of Respondent's conduct.

#### IV. CAUSES OF ACTION

32. The State re-alleges and incorporates all allegations of fact set forth above.
33. Overprescribing dangerous drugs. Respondent, by prescribing dangerous controlled substances for the treatment of pain without first obtaining records of previous treatment, ordering appropriate diagnostic tests and procedures, and reaching a reasonably based medical diagnosis, violated Tenn. Code Ann. § 63-6-214(b) (12), which prohibits prescribing a controlled substance in amounts and/or for durations not medically necessary, advisable or justified for a diagnosed condition. This course of conduct also violated Tenn. Code Ann. § 63-6-214(b)(4), which prohibits gross malpractice, or a pattern of continued or repeated malpractice, ignorance, negligence or incompetence in the course of medical practice. These actions and omissions were unprofessional conduct in violation of Tenn. Code Ann. § 63-6-214(b)(1), and violated Rule 0880-01.14(6)(e)(3).
34. Failure to supervise prescribing by Family Nurse Practitioners. Respondent, by failing to review the prescribing of controlled substances by Family Nurse Practitioners GN and EF, and by the other acts and omissions alleged above, failed to adequately supervise or ensure compliance with the accepted standard of medical care as required by Rule 0880-6-.02. These acts and omissions were unprofessional conduct in violation of Tenn. Code Ann. § 63-6-214(b)(1).
35. Failure to supervise Nurse Practitioner GN. Respondent, by his failure to make himself reasonably available to nurse practitioner GN for a period of over two weeks, his insistence that she see all patients previously scheduled to see Respondent, and the other conduct alleged above, failed to adequately supervise GN and failed to ensure compliance with the applicable standard of care as required by Rule 0880-6-.02. These

acts and omissions were unprofessional conduct in violation of Tenn. Code Ann. § 63-6-214(b)(1).

36. Gross Malpractice. Respondent's failure to use a fluoroscope, use of a 6.75% phenol solution for the facet injections of patient EG, and others acts and omissions as alleged above, constituted gross malpractice or a pattern of continued or repeated malpractice, ignorance, or incompetence in the course of medical practice in violation of Tenn. Code Ann. § 63-6-214(b)(4).

#### IV. CIVIL PENALTIES

37. The State re-alleges and incorporates the facts and causes of action set forth above, and incorporates herein its "memorandum or assessment of civil penalty" as permitted by

Rule 0880-01-.12(d).

38. Based on the facts and causes of action alleged above, the Board should impose Type A civil penalties in the total amount of Forty-one Thousand Dollars (\$41,000) against Respondent pursuant to Tenn. Code Ann. § 63-1-134(a), Rule 0461-1-.06, and Rule 0880-2-12(4), broken down as follows:

Twenty Thousand Dollars (\$20,000) in penalties for overprescribing controlled substances to the twenty patients identified above, at the rate of One Thousand Dollars (\$1,000) per patient,

One Thousand Dollars (\$1,000) for using 6.75% phenol in giving a facet injection to patient EG,

One Thousand Dollars (\$1,000) for failing to use fluoroscopic guidance in giving a facet injection to patient EG,



One Thousand Dollars (\$1,000) for failure to properly supervise Family Nurse Practitioner Eva Field as to prescribing controlled substances,

One Thousand Dollars (\$1,000) for failure to properly supervise Family Nurse Practitioner Gwendolyn Noe as to prescribing controlled substances, and

Seventeen Thousand Dollars (\$17,000) for failure to properly supervise Family Nurse Practitioner Gwendolyn Noe at the rate of One Thousand Dollars (\$1,000) for each of seventeen (17) days in February 2006 during which Respondent was not in the office or available to Ms. Noe for consultation and guidance.

39. The Board should impose these Type A Civil penalties because the acts and omissions upon which they are based constituted an imminent and substantial threat to the health, safety, and welfare of the patients and the public.
40. In addition, or in the alternative, the Board should assess such other types or amount of civil penalties as may be supported by good cause, pursuant to Rule 0880-2-.12(4)(d)(2).

#### PETITION FOR RELIEF

WHEREFORE, premises considered, the State prays that after notice to Respondent and an opportunity to be heard, the Board issue an order:

1. Finding that Respondent violated the Practice Act as alleged above;
2. Imposing civil penalties in the amount of Forty-one Thousand Dollars (\$41,000) or in such other amount as is supported by the proof;
3. Revoking Respondent's license to practice medicine in the State of Tennessee, or imposing such lesser discipline as the Board may find supported by the proof;
4. Assessing reasonable costs incurred in the prosecution of this case, including costs of investigation, attorney fees, and paralegal time, and all costs incurred by administrative

law judges, court reporters and witnesses including, but not limited to, travel and lodging during the prosecution of this matter. pursuant to TENN. CODE ANN. §§ 63-1-144, 63-6-214(k) and TENN. COMP. RULES & REGS. 0880-2-.12 (1) (j); and,

5. Granting the State such other general relief to which it may be entitled.

#### NOTICE OF HEARING

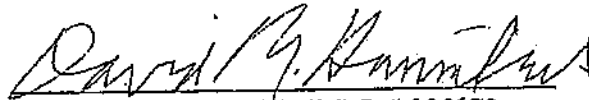
1. This matter will be presented as a contested case convened before a panel of the Board of Medical Examiners pursuant to Tenn. Code Ann. § 63-6-103, after notice, at a time and date to be determined after assignment of the case to an Administrative Judge employed by the Administrative Procedures Division of the Office of the Secretary of State.
2. If the Respondent does not enter an appearance and defend, a default judgment may be entered.
3. At the hearing of this matter, the Board shall determine whether the Respondent is guilty of violating the provisions of the law by which Respondent is hereby charged; and, if Respondent is found guilty, whether Respondent's license should be suspended or revoked and/or whether other discipline, including but not limited to civil penalties, should be imposed; whether to assess the costs of this cause against Respondent; and, whether the State should be afforded any further or general relief.

#### NOTICE OF RIGHTS

1. Respondent is entitled to be represented by legal counsel, to personally appear before the Board, to present witnesses, and to have subpoenas for witnesses issued.

2. The contested case hearing may not be held less than thirty (30) days after service of this notice of charges upon Respondent.
3. These proceedings against Respondent for disciplinary action against a license are conducted in accordance with the Tennessee Uniform Administrative Procedures Act ("UAPA"), Title 4, Chapter 5, of the Tennessee Code Annotated.

Respectfully submitted, this 15<sup>th</sup> day of June, 2010,



David M. Himmelreich, B.P.R. # 006672  
Deputy General Counsel  
Office of General Counsel  
Tennessee Department of Health  
Plaza I, Suite 210  
220 Athens Way  
Nashville, Tennessee 37243  
(615) 741-1611

CERTIFICATE OF SERVICE

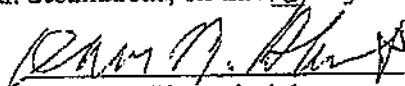
The undersigned hereby certifies that a true and correct copy of this document has been served upon Respondent:

Allen R. Foster, M.D.  
900 East Woodland Avenue  
Knoxville, Tennessee 37917

By Certified Mail  
Return receipt requested  
No. 7009 2250 0004 0767 5266,  
and by first class mail

Frank J. Scanlon, Esquire  
214 2<sup>nd</sup> Avenue North  
Suite 300  
Nashville, Tennessee 37201

with sufficient postage thereon to reach both destinations, on this 26<sup>th</sup> day of June, 2010.



David M. Himmelreich  
Deputy General Counsel